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File No. Securities Contracts II/42

Legal DEPARTMENT

B BRANCH

p. 12 (E)

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DY 16/5/42

Subject:—

Rules and Notifications

under the Bombay

Securities Contract Control Act, 1925—

File No. Securities Contracts II/42

Std. Sectt. Slip 24 B a.

116-B

C O N T E N T S.

Legal Department File No. Requisition Contracts II/43

Sr. No.	Serial No.	Subject	Pages
		Requisition Contract Control Act, 1943	
1.	U.N. to F.D. No.43 dt. 5th Jan 1943	Resolution passed by the Board of Alternative Share Board Stock Brokers's Association fixing minimum rates - Govt. Approval	1-4
2.	U.N. to F.D. No. 144-Genl. dt. 2nd April 1943	Opinion regarding the provisions to liquidate outstanding forward dealings etc.	5-6
3.	U.N. to F.D. No. 242 -Genl Dt. 11th June 1943	Sec. 3 (3) - Notification under	7-12
4.	U.N. to F.D. No. 4200 dt. 25thMay 1943	Sec. 6- Authority of Government to make Rules under	13-14

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Office of the A.L.A.

The first resolution passed by the Board of the Native Share and Stock Brokers Association is that the minimum rates fixed for January 1942 settlement to considered as the minimum rates for February 1942 settlement. Rule 90(a)(6)(iv) of the rules of the Association empowers the Board to issue orders fixing with the previous consent of Government from time to time rates above which or below which sales or purchases in any security shall or shall not be made. The resolution in question is ~~not~~ covered by the provisions of this rule and is legally in order.

2. The second resolution passed by the Board is that the resolutions of the Board dated 27th August 1940, 1st October 1940 and 24th October 1940 enabling the Board to dispense with the strict enforcement of rule 203(b) in connection with the business of the companies mentioned in the said resolutions be rescinded subject to the sanction of Government. Rule 90(b) of the rules provides that the Board may dispense with the strict enforcement or operation of any rule or rules provided that a resolution for this purpose is carried by a majority of three-fourths of the Board present at a meeting specially summoned and consisting of not less than twelve members and approved by Government. An authority passing a resolution is competent to rescind such resolution at any time. Under rule 90(b), approval of Government is necessary for the Board in dispensing with the strict enforcement or operation of any rule. There is no express provision in the rules providing for approval of Government being obtained for rescinding any resolution passed by the Board for dispensing with the strict enforcement or operation of any rule. But under the general principle laid down in section 21 of the Bombay General Clauses Act, 1904 it may be held that such approval of Government is necessary in this case for rescinding the resolutions referred to above.

There is, therefore, no legal objection to the resolution being approval by Government. As regards the question the whether the effect of according such approval would be to bring into operation the provisions of rule 208(b), which the bring resolutions of the Board dated 27th August 1940, 1st October 1940 and 24th October 1940 are rescinded, the position would be that the power given to the Board under these resolutions, namely to dispense with the strict enforcement of rule 208(b) in connection with the business of certain companies referred to in the resolutions, will no longer continue. In the result rule 208(b) operate will be enforceable in connection with these companies strictly as before. It is true that the provisions of rule 208(b) operate only during the period when the market is closed. Under Finance Department Notification No. 2962-F, dated 24th May 1940, Government accorded its consent to the closing of the share market until further notice. It appears that the market has been closed since that date. The sanction accorded by Government to the Board's resolutions by Government letters 2002/18041-D. dated 29th August 1940, 2002/21173-D dated 4th October 1940 and 2002/22948-D, dated 6th November 1940, cannot in my opinion be held to have in law the effect of opening the market which was closed. It is not, therefore, necessary to pass any fresh order closing the market in order to apply fully the provisions of rule 208(b). The view taken on this question by Sir Jamshed Kanga is correct. There is therefore no legal objection to Government according approval to the Board's resolution under consideration.

Sd/-
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Government of Legal Affairs.

U.O. to F.D., No. 42 , dated the 5th January 1942.

Hr/27/4

The draft amendemnts Nos. I,II,III and IV at pages 71-72 ante, as slightly amended appear to be legally in order. The Finance Department will no doubt examine their administrative purpose, and in particular may make clear its intention as to whether amendment No. I is to affect forward dealings only or also ready delivery prices.

2. As for amendemnt No. V at pages 72 and 73 it is not properly considered in the Finance Department. The intention to liquidate outstanding forward delaings in the scrips named is only expressed with reference to the dates by which the liquidations is to be carried out, but not with reference to the mode in which this is to be done. Assuming the forward market remains closed till the dates named, there can be no hammer price to fix under rule 125. In that event all adjustments (i.e.) final settlements at the last date appointed for liquidation (as distinguished from payment of differences on Pay Days) will have to be effected at a named price such as the making-up price specially fixed for the purpose. The present provisions in rule 298(b) to (g) contemplate an indefinite carry over of transactions over settlements, and specially provide for (a) option to buy-in for buyers, (b) payment of differences on Pay Day, and (c) adjustment of differences on the reopening of the market but they do not provide for (a) compulsion to buy-in for buyers, with compulsion to sell-out for sellers at auction prices (b) or in the alternative adjustment at any named (making-up) price finally even during the closure of the market by compelling sellers to 'buy of ' buyers and buyers to"sell to" sellers at a making-up price; and (c) in either case procedure for hammering on default by parties to pay up the final balances due at a named price as hammer price for all scrips in spite of closure of the market. The

Finance Department is therefore requested to reconsider its amendment No. V with an eye to its actual working. The subject of the amendments is highly technical and before referring the draft to this Department for legal scrutiny, the Finance Department will no doubt consult Mr. Shroff (Prisident of the Association), if necessary, on the implications of the amendments.

3 The presumption made in paragraph 4 of the Finance Department note dated 16th March 1942 is correct. The Legal Department will take the necessary steps to reserve the Bill for the consideration of the Governor-General

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Remembrancer of Legal Affairs.

U.R. to F.D., No 144-Confl dated the 2nd April 1942.

Mr/27/4

As to 1nod draft notification as amended.

2. Under rule 36(2), a member's right to membership ceases on his death. His security can therefore be returned under the existing rule 8(b) as it stands. No amendment of this rule is necessary and the amendment had therefore been omitted. It is, however, for the consideration of F.D. whether provision may not be made in this rule for returning the security to his legal representatives in the absence of any direction by the member. If so, after the word 'Direct' the following may be inserted:-

'or in the absence of any such direction, to his legal representatives".

3. The amendment of rule 20(7)(a) is so recast as to conform to the position that the documents are lodged with the company for registration by or on behalf of the purchaser (who may be a member of the Association himself, or his constituent).

4. The proposed new rule 232 (b) has been inserted as a new rule 232-A.

5. As regards the amendments to rule 36, the proposals of F.D. do not appear sufficient to clear up its intention. In "In re: Frances Dodsbury Madon", 43 B.L.R. 643, Kania J. held that the membership card (with the rights nominate) vests in the Association at the death of the member under rule 36(h). But apart from rule 36(h), the general schemes of the Rules as they stand at present seem to contemplate that the rights in the card should devolve as personal property on the deceased's legal representatives as they devolve under the ruling in 39 B.L.R. 666. Thus when a member dies leaving a card an applicant wishing to succeed to the membership is required to obtain the nomination by the legal representatives of the person mentioned in Appendix C under rule 10 Rule 12 then

recognises that the legal representatives of a deceased member or the persons mentioned in Appendix B may, with the sanction of the Board, nominate one ofthemselves or any other person otherwise eligible under these Rules for admission to membership of the Association, as a candidate for admission in the place of the deceased member. Rule 36(i) requires all the debts and liabilities of the deceased under the Rule to be satisfied by his legal representatives before the transfer of his right of nomination and rule 36(j) provides for the sale of the card to satisfy the debts etc. if they are not so satisfied by the legal representatives, and for the payment to the legal representatives or the personsmentioned in Appendix C of any surplus upon the execution by them of such release or indeminites as the said Board may require. These provisions are inconsistent with rule 36(h) which vests the card in the Association, and rule 38 which given the Association fullright of disposal of the card and its sale proceeds. On the assumption that the Association does not want to change the entire scheme of devolution of the rights in the card which has prevailed so far, nor proposes to spell out a default from the mere circumstance of the member's death, the amendments suggested by F.D. will have to be abandoned, and the following amendments substituted, namely: -

(1) In clause (h) of rules 36, the words "and vest in the Association" shall be omitted.

(2) In rule 38 for the word "or" where it occurs a second time, the word "and" shall be substituted.

F.D. should verify whether this correctly carries out its intention.

Sd/-
Remembrancer of Legal Affairs.

U.R. to F.D., No 242-Confl. dated the 11th June 1942

NOTIFICATION

Finance Department

Bombay Castle, 1942

No. 1. In pursuance of the provisions of sub- section(3) of section 5 of the Bombay Securities Contracts Control Act 1925 (Bom. VIII of 1925), the following amendment s made by the Native Share and Stock Brokers' Association, Bombay, in the Native Share and Stock Brokers' Association Rules, 1938 hereinafter called the said rules, are published for general information. They will be taken into consideration by the Government of Bombay on or after the expiry of one month from the date of publication of this notification.

1 In rule 27(a) of the said rules, after the word "transacting" the words "his own or his constituent's" shall be inserted.

2. In rule 44(a) of the said rules, after the word "surviving" wherever it occurs the words " or continuing" shall beinserted.

3. In rule 65 of the said rules, after the words "Municipal Boards" the words "First Debentures of any reputable Joint Stock Company" shall be inserted.

4. In rule 90(a) (6) (iii) of the said rules, after the word "admission" the words "or readmissi n" shallbe inserted.

[illegible] of the said rules, the words "Any dispute relating to such indemnity shall be referred to the Arbitration Committee and decided in the manner provided in these rules for the arbitration of disputes between Members of the Association" shall be added.

6. In rule 207(a) of the said rules, (a) after the word "registration" the words "by or on behalf of the purchaser or any subsequent purchaser" shall be inserted; and (b) for the words "receipt of such documents by him" the words "such delivery" shall be substituted.

7. In rule 232 of the said rules, for the words "for forging" the words either for breach of non-compliance with any of the conditions of admission to dealings, or for any other reason whatsoever" shall be substituted.

8. After rule 232 of the said rules, the following heading and rule shall be inserted namely:-

Publication of Dealings

"232A The Secretary on the direction by a unanimous Resolution, not to deal for ready delivery or forward dealings or for both any share removed from the list under rule 232."

9. In rule 209 of the said rules,

(i) in clause (a),

(a) the words "either forthwith at the making up prices fixed by the Board and shall give immediate notice of the same in writing to the Defaulters' Committee, or" shall be deleted; and

(b) for the words and figures "as provided by rule 125" the words "on the day of the reopening of the market for dealings either for ready or forward delivery" shall be substituted;

(ii) in clause (f), the words commencing with "by buying of," and ending with "by the Board or" shall be deleted;

(iii) therein in clause (g),

(a) for the words "by buying of, or selling to, him such securities as he may have contracted to take or deliver," the words "by giving notice in writing," shall be substituted; and

(b) the words "at the making-up prices fixed by the Board or " shall be deleted.

By order of the Governor of Bombay,

Secretary to Government.

In R.L.A.'s opinion No 144-Confl, dated the 2nd April 1942, F.D. was asked to provide for the procedure for hammering, on default by parties to pay up the final balances due, at a named price as hammer price for all scrips in spite of closure of the market. (See the protions side lied on p. 74) The changes suggested by Mr. Shroff in the amendments to the rules do not include a provision as suggested in para 2 of R.L.A.'s opinion referred to above. F.D. may clarify whether such a provision is not necessary.

2. The next question is whether the amendments now proposed to be added in the rules can have effect on outstanding contract. Under section 6 of the Bombay Securities Contracts Control Act, 1925, every forward contract must be made subject to the rules duly sanctioned under section 5. Under section 5 the Native Share and Stock Brokers Association has made rules for the regulation and control of transactions in securities (other than ready delivery contracts) which are duly sanctioned. Rule 419(b) of those Rules provides that all contracts made by a member with another member for the purchase or sale of stocks, shares and like securities in which dealings have been permitted shall in all cases be deemed made <u>subject to the Rules of the Association</u> The pharase underlined must be held to refer to rules as amended from time to time, (i.e. for the time being in force in relation to the stage of settling the contract). The Association has already acted on this view when it inserted clauses (b) to (g) in rule 298 affecting outstanding contracts. If the Association can make rules affecting outstanding contracts there is no reason

why Government cannot make rules affecting such contracts.' The view taken by the D.L.A.' in his opinion No. 2065, dated the 7th March 1942, that Government can under new section 5 A make rules for the purpose of enforcing any scheme of liquidation of outstanding contracts is correct and requires no reconsideration.'

Sd/-.
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'Remembrancer of Legal Affairs.'

U.R.' to F.D.' No. 4290, dated the 25th May 1942.

Ex/27/4